

AMENDED IN SENATE APRIL 4, 2006

SENATE BILL

No. 1274

Introduced by Senator Dunn

February 9, 2006

~~An act to amend Section 437c of the Code of Civil Procedure, relating to civil actions. An act to amend Section 16757 of, and to add Section 16720.1 to, the Business and Professions Code, relating to business practices.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1274, as amended, Dunn. ~~Civil actions: Cartwright Act: monopolies~~ summary judgment.

~~Existing law sets forth the conditions and requirements for filing a motion for summary judgment, as specified. Existing law requires that notice of a motion for summary judgment and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing. Existing law permits a party to move for summary adjudication of one or more causes of action, affirmation defenses, claims for damages, or issues of duty, the Cartwright Act, prohibits combinations in restraint of trade, with various remedies in that regard.~~

~~This bill would make technical, nonsubstantive changes in these provisions provide that it is unlawful for any person to monopolize, attempt to monopolize, or to combine or conspire with any person to monopolize any part of trade or business, and that this activity is a trust for purposes of the Cartwright Act. The bill would provide that "monopolize" includes "monopsonize." The bill would also specify the standards of proof required in a motion for summary judgment or~~

summary adjudication filed by a defendant in an action under the Cartwright Act.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 16720.1 is added to the Business and*
2 *Professions Code, to read:*

3 16720.1. (a) *It is unlawful for one or more persons to*
4 *monopolize, attempt to monopolize, or to combine or conspire*
5 *with another person or persons to monopolize a part of trade or*
6 *commerce, and this activity is a trust for purposes of this article.*

7 (b) *As used in this section, “monopolize” includes*
8 *“monopsonize.”*

9 SEC. 2. *Section 16757 of the Business and Professions Code*
10 *is amended to read:*

11 16757. (a) *In prosecutions under this chapter, it is sufficient*
12 *to prove that a trust or combination exists, and that the defendant*
13 *belonged to it, or acted for or in connection with it, without*
14 *proving all the members belonging to it, or proving or producing*
15 *any article of agreement, or any written instrument on which it*
16 *may have been based, or that it was evidenced by any written*
17 *instrument at all.*

18 (b) *In a motion for summary judgment or summary*
19 *adjudication filed by a defendant in an action under this chapter,*
20 *the following shall apply:*

21 (1) *A plaintiff, in opposing the motion, may do either or both*
22 *of the following:*

23 (A) *Reasonably rely on circumstantial evidence and inferences*
24 *drawn from circumstantial evidence.*

25 (B) *Reasonably rely on inferences from conduct that is as*
26 *consistent with permissible competition as with restraint of trade*
27 *or commerce unless a defendant demonstrates by a*
28 *preponderance of evidence that allowing those inferences would*
29 *have a detrimental effect on competition consistent with the goals*
30 *of this chapter and federal antitrust laws.*

31 (2) *A plaintiff shall not be required to submit proof that tends*
32 *to exclude the possibility of procompetitive conduct.*

1 (3) *The motion for summary judgment or summary*
2 *adjudication may not be granted solely on the basis of denials by*
3 *an officer, director, or employee of the defendant.*

4 ~~(b)~~

5 (c) The character of the trust or combination alleged may be
6 established by proof of its general reputation as such.

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9 **All matter omitted in this version of the bill**
10 **appears in the bill as introduced in**
11 **Senate, February 9, 2006 (JR11)**
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